

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

MAURICE GODFREY,

Plaintiff

v.

DARIN F. IMLAY, *et al.*,

Defendants

Case No. 2:22-cv-02020-CDS-VCF

ORDER DISMISSING AND  
CLOSING CASE

Plaintiff Maurice Godfrey brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Clark County Detention Center. ECF No. 1-1. On December 16, 2022, this court ordered Godfrey to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before February 15, 2023. ECF No. 3. The court warned Godfrey that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. *Id.* at 2. That deadline expired and Godfrey did not file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

## I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the

1 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their  
 2 merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine Prod. Liab.*  
 3 *Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

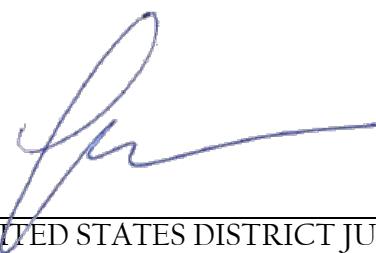
4 The first two factors, the public's interest in expeditiously resolving this litigation and  
 5 the court's interest in managing its docket, weigh in favor of dismissing Godfrey's claims. The  
 6 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a  
 7 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading  
 8 ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.  
 9 1976). The fourth factor—the public policy favoring disposition of cases on their merits—is  
 10 greatly outweighed by the factors favoring dismissal.

11 The fifth factor requires the court to consider whether less drastic alternatives can be  
 12 used to correct the party's failure that brought about the court's need to consider dismissal. *See*  
 13 *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic  
 14 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*  
 15 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive  
 16 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives  
 17 prior to disobedience of the court’s order as satisfying this element[,]” i.e., like the “initial  
 18 granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have  
 19 been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before  
 20 finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v.*  
 21 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until  
 22 and unless Godfrey either files a fully complete application to proceed in forma pauperis or pays  
 23 the \$402 filing fee for a civil action, the only alternative is to enter a second order setting another  
 24 deadline. But the reality of repeating an ignored order is that it often only delays the inevitable  
 25 and squanders the court's finite resources. The circumstances here do not indicate that this case  
 26 will be an exception: there is no hint that Godfrey needs additional time or evidence that he did  
 27 not receive the court's order. Setting another deadline is not a meaningful alternative given  
 28 these circumstances. Accordingly, the fifth factor favors dismissal.

1       II. CONCLUSION

2           Having thoroughly considered these dismissal factors, I find that they weigh in favor of  
3           dismissal. It is therefore ordered that this action is dismissed without prejudice based on  
4           Godfrey's failure to file a fully complete application to proceed in forma pauperis or pay the full  
5           \$402 filing fee in compliance with this court's December 16, 2022, order. The Clerk of Court is  
6           directed to enter judgment accordingly and close this case. No other documents may be filed in  
7           this now-closed case. If Godfrey wishes to pursue his claims, he must file a complaint in a new  
8           case.

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10          DATED: March 7, 2023



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13          UNITED STATES DISTRICT JUDGE

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